

The Auditor reports that the deceased was a creditor of the firm at that time, and this does not appear to be now disputed; the controversy with reference to this part of the claim of the complainant, applying to its amount, and not to its existence. In the statement of the Auditor, designated as G. No. 19, the principal of this claim is stated to be \$6,644 56, and in account G. No. 24, which is an account between the administrator and the surviving partners, interest is allowed her on this sum from the 1st of May, 1826 to the 1st of September, 1848.

Both sides are dissatisfied with this mode of stating the account, the complainants insisting that interest should run from the 1st of May, 1825 to the day of the death, and the defendants insisting that as the bill prays for profits, the Auditor should not have allowed interest, but should have stated an account of profit and loss from 1825 to 1841, when a decree was passed for a sale of the property, and have allowed the administratrix a proper proportion of those profits.

The rule upon the subject of the right of the representatives of a deceased partner at their election, to demand an account of the surviving partners, (if they continue the trade,) of the profits, or to charge them with interest as stated in *Story on Part.*, section 343, was adopted by the Court of Appeals, when this case was in that court, and must, therefore, be looked upon as the true one.

It is there said, "that if the surviving partners continue the trade or business, it is at their own risk, and they will be liable at the option of the deceased partner, to account for the profits made thereby, or to be charged with interest upon the deceased partner's share of the surplus, besides bearing all the losses."

The correctness of this rule has not been, and of course cannot be denied, sanctioned as it is by the high authority of the Court of Appeals; but it is said, that no election has been made in this case, the complainant, the administratrix of the deceased partner, having only called for an account of the profits with a view of determining whether she will claim a share of those profits or interest on the amount due her intestate.

Such, however, is not my understanding of the bill. It al-